

Revetment Block and Mat  
Serial No.: 10/068,324  
Atty. Docket #: 21.855-02001

### **REMARKS**

Reconsideration of the pending application is respectfully requested. Claims 1-39 remain in the present application. Claims 1, 3-5, 10, 20, 25-27, 30, 34, 35, and 37 have been amended to more particularly point out the present invention.

#### **35 U.S.C. § 102 Rejection of Claims 1-3, 17-20, 25, 26, 34, 35, and 37-39**

The Examiner has rejected claims 1-3, 17-20, 25, 26, 34, 35, and 37-39 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,813,812, issued to Hasegawa *et al.* Applicant's attorney respectfully traverses the Examiner on this ground of rejection.

The Examiner alleges that Hasegawa *et al.* discloses a revetment block comprising: a substantially rectangular block having a top and bottom surface; first and second end walls; first and second side walls (generally about 16 and 20) having at least one vertical surface an inwardly and outwardly extending transition surfaces defining an interlocks; the end walls being substantially parallel and the side walls being substantially parallel; and first and second corner spaces defining interlocks. Further, the Examiner alleges that Hasegawa *et al.* discloses the plurality of blocks forming a mattress including half-sized blocks 38.

U.S. Patent No. 4,813,812, issued to Hasegawa *et al.*, teaches sloping blocks and revetment structure using the same. The patent discloses a block for forming a stair-like revetment structure. The blocks are sloping blocks having a flat upper surface which may be

Revetment Block and Mat  
Serial No.: 10/068,324  
Any. Docket #: ZL855-02001

used to form a stair-type revetment mat along a sloping substrate. The device is taught as a low cost simplified sloping block for forming a revetment mat.

"A claim is anticipated only if each and every element in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Contrary to the Examiner's assertion, Hasegawa *et al.* neither expressly nor inherently sets forth each claim element of the Claims 1-3, 17-20, 25, 26, 34, 35, and 37-39 of the pending application.

Concerning Claim 1, Applicant's application, as presently recited in claim 1, claims a revetment block comprising first and second side walls each having at least one vertical surface and inwardly and outwardly extending transition surfaces between said top and said bottom surface. To the contrary, the Examiner has stated that numerals 16 and 20 of the Hasegawa *et al.* reference show first and second side walls having at least one vertical surface and inwardly and outwardly extending transition surfaces. Applicant's attorney asserts, however, that numeral 16 references an engagement pod and numeral 20 references a front pod. Nevertheless, assuming 16 and 20 to generally show first and second side walls, the engagement pod and front pod each fail to disclose at least one vertical surface as well as inwardly and outwardly extending transition surfaces between top and bottom surfaces as claimed in the presently pending application. Since the Hasegawa *et al.* reference fails to teach all of the elements of the claimed invention, Applicant's attorney asserts that the Examiner's cited reference also fails to anticipate the

Revetment Block and Mat  
Serial No.: 10/068,324  
Atty. Docket #: ZL855-02001

claimed invention.

Concerning Claim 17, Applicant's application as recited in Claim 17 claims side walls including interlocks extending from said side walls and corner spaces. The Examiner asserts that Figure 11 shows interlocking at corner spaces. However, the Hasegawa *et al.* reference fails to disclose interlocks extending from corner spaces of the revetment block. To the contrary, Hasegawa *et al.* shows corner spaces generally about 14(a) but fails to disclose interlocks extending therefrom. Since the Hasegawa *et al.* reference fails to teach all of the elements of the claimed invention, Applicant's attorney asserts that the Examiner's cited reference also fails to anticipate the claimed invention.

Concerning Claim 20, Applicant's application as recited in Claim 20 claims corner spaces having vertical and inclined transition surfaces therein. To the contrary, the Hasegawa *et al.* reference shows corner spaces generally about 14(a), however the walls of engagement pod 16 generally adjacent corner spaces shown about 14(a) are substantially vertical and fail to comprise inclined transition surfaces therein. Further, there do not appear to be any corner spaces around the side wall generally defined at 20 by the Examiner. Since the Hasegawa *et al.* reference fails to teach all of the elements of the claimed invention, Applicant's attorney asserts that the Examiner's cited reference also fails to anticipate the claimed invention.

Concerning Claims 25 and 34, Applicant's application as recited in Claims 25 and 34 claims first and second side walls each having at least one vertical surface and inwardly and outwardly extending inclined transition surfaces between said top and said bottom surface. To the contrary, considering numerals 16 and 20 as side walls in the Hasegawa *et al.* reference, the

Revetment Block and Mat  
Serial No.: 10/068,324  
Atty. Docket #: ZL855-02001

cited reference fails to provide inwardly and outwardly extending inclined transition surfaces on each side wall between the top and bottom surface of the revetment block. Since the Hasegawa *et al.* reference fails to teach all of the elements of the claimed invention, Applicant's attorney asserts that the Examiner's cited reference also fails to anticipate the claimed invention.

Concerning Claim 35, Applicant's application as recited in Claim 35 claims tapered interlocks extending from said side walls defining four corner spaces in said revetment blocks. To the contrary, the Hasegawa *et al.* reference generally shows corner spaces along each side of engagement pod 16 generally shown about the area represented by 14(a). However, the opposed side wall, represented by numeral 20 as stated by the Examiner, fails to teach or disclose any corner spaces along either side of the front pod 20. Thus, as currently amended Claim 25 recites four corner spaces which are not shown by the Hasegawa *et al.* reference. Since the Hasegawa *et al.* reference fails to teach all of the elements of the claimed invention, Applicant's attorney asserts that the Examiner's cited reference also fails to anticipate the claimed invention.

Concerning Claim 37, Applicant's application as recited in Claim 37 claims said first and said second side wall each having a first lower vertical surface and a first and a second upper vertical surface. Claim 37 further recites a first transition extending outwardly between said first lower surface and said first upper vertical surface. To the contrary, Hasegawa *et al.* fails to disclose a first lower vertical surface and a first and a second upper vertical surface on each of said first and second side walls (at 16,20) and further fails to disclose a first transition surface extending outwardly between said first lower vertical surface and said first upper vertical surface. Since the Hasegawa *et al.* reference fails to teach all of the elements of the claimed invention,

Revetment Block and Mat  
Serial No.: 10/068,324  
Atty. Docket #: ZL855-02001

Applicant's attorney asserts that the Examiner's cited reference does not anticipate the claimed invention.

Applicant's attorney further asserts that since the independent claims are not anticipated, claims depending from the non-anticipated independent claims are not anticipated either. Since Hasegawa *et al.* fails to teach, either expressly or inherently, every element of Claims 1-3, 17-20, 25, 26, 34, 35, and 37-39, these claims are believed to be in condition for allowance and Applicant's attorney respectfully requests this ground of rejection withdrawn.

**35 U.S.C. § 103(a) Rejection of Claims 4-16, 21-24, 27-33, and 36**

The Examiner has rejected Claims 4-16, 21-24, 27-33 and 36 under 35 U.S.C. § 103(a) as being unpatentable over Hasegawa *et al.* in view of U.S. Patent No. 4,370,075 issued to Scales (the '075 patent). Applicant's attorney respectfully traverses the Examiner on this ground of rejection.

The Examiner alleges that Hasegawa *et al.* discloses the claimed invention except for the tapered apertures, the dome, and the ducts. The Examiner further alleges that Scales teaches that it is known to provide tapered apertures 10, a dome 24, and ducts 5 as set forth at columns 4-5, lines 23-30. Thus, the Examiner alleges it would have been obvious to one of having ordinary skill in the art at the time the invention was made to provide a tapered aperture, a dome, and ducts, as taught in the '075 patent in order to facilitate handling, drainage and to facilitate connection of an abutting block.

Applicant's instant invention generally teaches a Revetment Block and Mat comprising a

Revetment Block and Mat  
Serial No.: 10/068,324  
Atty. Docket #: 2L855-02001

substantially rectangular block having a top and bottom surface; first and second ends extending vertically between said top and bottom surfaces, and first and second sidewalls each having at least one vertical surface and inwardly and outwardly extending transition surfaces between said top and bottom surface.

As previously indicated, U.S. Patent No. 4,813,812, issued to Hasegawa *et al.*, teaches sloping blocks and revetment structure using the same. The patent discloses a block for forming a stair-like revetment structure. The blocks are sloping blocks having a flat upper surface which may be used to form a stair-step type revetment mat along a sloping substrate. The device is taught, as stated in the abstract, to be a low cost simplified sloping block. Further as stated in column 1, line 65, column 2, line 3, water passage is formed between engagement pods so that the constructed revetment will have no notches, holes, etc. on the stepped surfaces for passing the water, to thereby ensure safety and facilitate maintenance. At column 4, lines 34-36, the specification further states since the structure is free of holes and indentations on the step surfaces (upper surfaces), those walking on the structure can be protected from unforeseen danger. Thus, the Hasegawa *et al.* reference is taught to have a flat upper surface free of indentations, notches, domes or other surface structures which would make the upper surface of the block uneven and therefore unsafe for walking.

Contrary to Hasegawa *et al.*, the '075 patent teaches a block having a dome-like structure with apertures in the upper surface of the dome and extending downwardly through the dome and the block. The openings or apertures extend through the block in order to relieve hydraulic pressure so that a mat formed of a plurality of blocks will not lift from the water body substrate

Revetment Block and Mat  
Serial No.: 10/068,324  
Atty. Docket #: ZL855-02001

as the water moves there along.

MPEP 2142 states that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Further, prior art references must be considered in their entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). MPEP 2143.01 further states, "If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." *In Re Gorman*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Applicant's attorney asserts that neither the Hasegawa *et al.* reference nor the Scales reference provides the proper suggestion or motivation to modify the other reference and therefore the Examiner has failed to make a *prima facie* case of obviousness. As stated in the MPEP and by the Federal Circuit, the teaching or suggestion must come from the prior art, not the applicant's disclosure. Since the Hasegawa *et al.* reference teaches that the upper surface of the revetment block should be flat and free of any surface apertures, holes, domes or other

Revetment Block and Mat  
Serial No.: 10/068,324  
Atty. Docket #: ZL855-02001

irregularities to provide a safe walking surface, Applicant's attorney further asserts that combination of the Hasegawa *et al.* reference and the Scales reference is improper because the modification would render the Hasegawa *et al.* reference unsatisfactory for its intended purpose. Applicant's attorney further asserts that since such a modification would render the prior art reference unsatisfactory and that there is no suggestion or motivation for the Examiner's cited combination, the Examiner has made an impermissible hindsight rejection. The Federal Circuit has stated:

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fritch*, 972 F.2d 1260 (Fed. Cir. 1992).

In addition to the above cited reasoning for removal of the presently pending rejection, Applicant's attorney further asserts that the Examiner has not made a *prima facie* showing of obviousness. As previously indicated, U.S. Patent law requires that all the elements of a claim be shown by one or more references in order to make a proper rejection under 35 U.S.C. § 103. Further MPEP 2142 states that to establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The Examiner has rejected the independent claims of the present application based on the Hasegawa *et al.* in view of Scales. However, as previously discussed, the Hasegawa *et al.* reference fails to teach or describe all of the claim limitations relied upon by the Examiner in making the instant obviousness rejection. Thus, the Examiner has failed to make a *prima facie*



Revtment Block and Mat  
Serial No.: 10/068,324  
Atty. Docket #: ZL855-02001

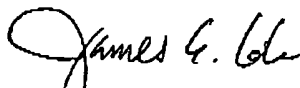
showing of obviousness.

For these reasons Applicant's attorney asserts that Claims 4-16, 21-24, 27-33, and 36 are presently in condition for allowance and respectfully requests the Examiner to remove this ground of rejection.

**Conclusion**

Applicant urges that the instant application is in condition for allowance. However, if the Examiner believes there are other unresolved issues in this case, Applicant's attorney of record would appreciate a collect call at (502) 584-1135 to discuss such remaining issues.

Respectfully submitted,



Dated: January 27, 2004

James E. Cole  
MIDDLETON REUTLINGER  
2500 Brown & Williamson Tower  
Louisville, Kentucky 40202  
(502) 584-1135  
Reg. No. 50,530